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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051006
Party	Plaintiff Couch/Braunsdorf Affinity, Inc.
Correspondence Address	JOSHUA S FRICK BRINKS HOFER GILSON & LIONE PO BOX 10395 CHICAGO, IL 60610 UNITED STATES officeactions@brinkshofer.com, pjones@brinkshofer.com
Submission	Motion to Quash
Filer's Name	Joshua S. Frick
Filer's e-mail	officeactions@brinkshofer.com
Signature	/Joshua S. Frick/
Date	11/10/2010
Attachments	2010-11-10 - Perks Response to Mtn to Quash - Brief (redacted).pdf (12 pages) (110149 bytes) 2010-11-10 - Perks Response to Mtn to Quash - Ex A - D (redacted).pdf (54 pages) (1968954 bytes) 2010-11-10 - Perks Response to Mtn to Quash - Ex E-S (redacted).pdf (63 pages) (1509251 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:		
	:	Cancellation No.	92051006
Petitioner,	:		
	:	Mark:	PERKSPOT
v.	:		
	:	Registration No.	3,355,480
12 INTERACTIVE, LLC,	:		
	:	Registered:	December 18, 2007
Registrant.	:		

**PETITIONER’S RESPONSE TO REGISTRANT’S
MOTION TO QUASH NOTICES OF DEPOSITION [REDACTED]**

12 Interactive, LLC’s (“Registrant”) Motion to Quash Notices of Deposition should be denied because there is substantial justification for the timing of Petitioner Couch/Braunsdorf Affinity, Inc.’s (“Petitioner”) disclosure of Branden Smythe, Sean Keeler and Daniel Kristal. The actual confusion facts in the possession of all three witnesses did not come to light until after Petitioner had served its Pre-Trial Disclosures. Once Petitioner discovered the pertinent facts, it served supplemental Pre-Trial Disclosures and Notices of Testimony Deposition, giving Registrant eight and nine days notice. Granting Registrant’s motion will prejudice Petitioner in its ability to present evidence of several instances of actual confusion. It will also reward Registrant for its attempt to hide Mr. Smythe by failing to disclose him in Registrant’s Initial Disclosures or its interrogatory responses.

I. FACTS

A. Background.

Petitioner and Registrant exchanged initial disclosures on February 9, 2010. Petitioner identified its President Bob Dow and Registrant identified its CEO Christopher Hill as

individuals likely to have discoverable information.¹ (See Exhibit A, Petitioner's Initial Disclosures and Exhibit B, Registrant's Initial Disclosures). After their exchange of initial disclosures, the parties engaged in settlement discussions but were unable to reach an agreement.

Registrant chose not to serve any discovery in this proceeding. Petitioner served discovery, including document requests and interrogatories, on the last day of discovery, July 9, 2010. Registrant provided written responses to the discovery requests on August 13, 2010, but withheld all responsive documents. (See Exhibits C, D, and E). Registrant objected to virtually every one of Petitioner's Document Requests on the ground that the requests sought "documents that Registrant considers to be proprietary and/or confidential" and stated that Registrant would provide the requested documents only upon entry of a suitable protective order. (See Exhibit D). Registrant also failed to identify Mr. Smythe in its response to Interrogatory No. 12 asking about actual confusion incidents. (See Exhibit C).

Despite having received no documents from Registrant, Petitioner timely served its Pre-Trial Disclosures on September 15, 2010 in which Petitioner identified Mr. Dow and Mr. Hill. (See Exhibit F). After Petitioner served its Pre-Trial Disclosures, the parties executed a protective order on September 17, 2010, and Registrant finally mailed documents responsive to Petitioner's discovery requests in electronic form on a disk, which Petitioner received on September 20, 2010.² (See Exhibit G, September 17, 2010 letter from K. Nye to P. Jones).

¹ Registrant did not disclose Branden Smythe, one of its principals, as having discoverable information even though he had received actual confusion e-mails which were subsequently produced to Petitioner.

² On September 13, 2010, Petitioner's counsel e-mailed a signed Protective Order draft to Registrant's counsel and requested production of responsive documents. (See Exhibit H, September 13, 2010 e-mail from P. Jones to M. Kelber). On September 21, 2010, Petitioner's counsel faxed a letter to Registrant's counsel acknowledging receipt of the produced materials and emphasizing that the documents had not been previously made available to Petitioner. (See Exhibit I, September 21, 2010 letter from P. Jones to K. Nye).

B. Branden Smythe.

Branden Smythe is Registrant's Vice President of National Sales.³ When Petitioner reviewed Registrant's documents it discovered e-mails addressed to Mr. Smythe from third parties that constitute instances of actual confusion. (See Exhibit K). Because of Registrant's failure to disclose Mr. Smythe in its Initial Disclosures or in its interrogatory responses, and Registrant's failure to produce documents until after Petitioner served its Pre-Trial Disclosures, Petitioner was not previously aware of Mr. Smythe and his knowledge of actual confusion. Registrant thus could not have disclosed Mr. Smythe in its Pre-Trial Disclosures.

C. Sean Keeler.

Sean Keeler is a call center representative with Petitioner's parent company, Augeo Affinity Marketing ("Augeo"), who receives customer calls on behalf of Petitioner. Petitioner expects Mr. Keeler to testify at his deposition that on October 6, 2010, after the testimony period began, he received a phone call requesting information which Petitioner believes is evidence of actual confusion. Petitioner thus could not have disclosed Mr. Keeler in its Pre-Trial Disclosures.

D. Daniel Kristal.

Daniel Kristal is Augeo's Vice President. Mr. Kristal participated in an e-mail exchange with a third party who confused Registrant with Petitioner. (See Exhibit L, October 20, 2009 e-mail exchange between D. Kristal and B. Nelson). The e-mail exchange occurred in October 2009, however, Petitioner did not become aware of the existence of the e-mail until October 12, 2010, and thus after Petitioner served its Pre-Trial Disclosures.

³ Petitioner served Mr. Smythe with a subpoena on October 28, 2010 for his testimony deposition. (See Exhibit J).

E. Petitioner's Supplemental Pre-Trial Disclosures.

On October 20, 2010, Petitioner supplemented its Pre-Trial Disclosures to add Messrs. Smythe, Keeler and Kristal to the list of witnesses whose testimony Petitioner may present during Petitioner's testimony period if the need arises. (See Exhibit M). Also on October 20, 2010, Petitioner served Notices of Testimony Deposition for Messrs. Smythe (Attached as Exhibit N), Keeler (Attached as Exhibit O) and Kristal (Attached as Exhibit P) for depositions on October 28 and 29 respectively.

F. Michelle Whitehead and Cindy Blackburn.

Yet another incident of actual confusion occurred on October 26, 2010. This was captured in an e-mail exchange involving Michelle Whitehead and Cindy Blackburn (both employed by one of Petitioner's clients), and Petitioner in which complaints were made to Petitioner about one of Registrant's sales reps in the mistaken belief the sales rep was employed by Petitioner. (See Exhibit Q, October 26, 2010 email from M. Whitehead to D. Garcia).

G. Petitioner's Second Supplemental Pre-Trial Disclosures and Supplemental Initial Disclosures.

Registrant served Supplemental Initial Disclosures on November 5, 2010, identifying Ms. Whitehead and Ms. Blackburn. (See Exhibit R). Petitioner also included Mr. Hill, Mr. Smythe, Mr. Keeler and Mr. Kristal in the Supplemental Initial Disclosures to bring it in conformance with Petitioner's Pre-Trial Disclosures. (See Exhibit R). Simultaneously, Petitioner supplemented its Pre-Trial Disclosures a second time to identify Ms. Whitehead and Ms. Blackburn as witnesses whose testimony Petitioner may present if the need arises. (See Exhibit S).

H. Timeline.

The timeline of events pertinent to this motion is thus as follows:

- February 9, 2010 – Petitioner and Registrant exchange Initial Disclosures.
- July 9, 2010 – Close of discovery, Petitioner serves discovery including document requests.
- August 13, 2010 – Registrant provides written responses to discovery but refuses to produce any documents without the entry of a protective order.
- September 13, 2010 – Petitioner’s counsel sent e-mail to Registrant’s counsel with a signed Protective Order draft and requested production of responsive documents.
- September 15, 2010 – Petitioner serves Pre-Trial Disclosures.
- September 17, 2010 – Parties execute Protective Order.
- September 20, 2010 – documents received by Petitioner’s counsel, including Mr. Smythe’s confusion e-mails.
- September 30, 2010 – Petitioner’s testimony period begins.
- October 6, 2010 – Mr. Keeler actual confusion incident occurs.
- October 12, 2010 – Petitioner learns of Mr. Kristal’s confusion incident.
- October 20, 2010 – Petitioner Supplements Pre-Trial Disclosures to add Mr. Smythe, Mr. Keeler and Mr. Kristal, and serves deposition notices for October 28 and 29.
- October 26, 2010 – Ms. Whitehead and Ms. Blackburn confusion incident occurs.
- November 5, 2010 – Petitioner serves Supplemental Initial Disclosures & Second Supplemental Pre-Trial Disclosures.

II. ARGUMENT

Petitioner should be allowed to take the testimony depositions of Mr. Smythe, Mr. Keeler and Mr. Kristal. Petitioner is substantially justified in not having included these three individuals in its first Pre-Trial Disclosures because it was not aware of the existence of the confusion evidence in the possession of Mr. Smythe and Mr. Kristal, and the incident with Mr. Keeler had yet to occur. Petitioner has now supplemented its Initial Disclosures and Pre-Trial Disclosures, served Mr. Smythe with a subpoena, and should now be allowed to proceed with these three testimony depositions.

The evidence in possession of these three individuals demonstrates continuing actual confusion, and is powerful evidence of the likelihood of confusion. Granting the Motion to Quash would thus prejudice Petitioner.

A. Rule 37(c).

Rule 37(c) states that “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or 26(e), the party is not allowed to use that information or witness to supply evidence...unless the failure was substantially justified or is harmless.” Fed R. Civ. P. 37(c); 37 C.F.R. § 2.120(g)(2). By limiting this sanction to violations ‘without substantial justification,’ coupled with the exception for violations that are ‘harmless,’ it is intended to avoid unduly harsh penalties. Fed. Civ. P. 37, Advisory Committee Notes (1993 Amendments, Subdivision (c)). As described above, Petitioner was substantially justified in not disclosing any of Mr. Smythe, Mr. Keeler or Mr. Kristal in its Pre-Trial Disclosures, because their evidence had not come to light or had not occurred.

B. Petitioner Is Substantially Justified In Not Having Previously Disclosed These Witnesses.

1. Branden Smythe.

Petitioner could not have identified Mr. Smythe in its Pre-Trial Disclosures because it was not aware of Mr. Smythe's confusion evidence at that time. Registrant's failure to produce the Smythe confusion e-mails or identify him in its Interrogatory Responses prior to Petitioner's service of its Pre-Trial Disclosures, meant that Mr. Smythe could not have been included in the Pre-Trial Disclosures. Further, it is inconceivable that Petitioner's subsequent disclosure of Mr. Smythe as a witness could surprise Registrant. Mr. Smythe is a principal of Registrant, and the confusion evidence exists in e-mails that were in the possession of Registrant and its counsel. Registrant should have expected Mr. Smythe to be called as a witness.

In addition, Registrant should have identified Mr. Smythe in its Initial Disclosures, as required by Fed. R. Civ. P. 26. Mr. Smythe is copied on several different confusion e-mails, and thus clearly had discoverable information. Registrant did not revise its Initial Disclosures to add Mr. Smythe, as required by Fed. R. Civ. P. 26(e), even though it was in possession of the actual confusion e-mails. If Registrant had timely disclosed Mr. Smythe, then Petitioner could have timely included Mr. Smythe in its Pre-Trial Disclosures. Registrant's attempt to hide Mr. Smythe should not be rewarded by barring Petitioner from taking his testimony deposition.

2. Sean Keeler.

Petitioner could not have disclosed Mr. Keeler in its Pre-Trial Disclosures, because the incident of confusion had not yet occurred. Petitioner disclosed Mr. Keeler in supplemental Pre-Trial Disclosures, and thus his testimony deposition should be allowed.

3. Daniel Kristal.

Mr. Kristal's confusion incident occurred in October 2009. However, Petitioner and its counsel did not become aware of the confusion incident until October 2010, after Petitioner served its Pre-Trial Disclosures. Mr. Kristal has been disclosed in supplemental Pre-Trial Disclosures, and thus his testimony deposition should be allowed.

C. Petitioner Timely Supplemented Its Disclosures Upon Learning that Additional Witnesses Possessed Relevant Information.

Pursuant to 37 C.F.R. §§ 2.116(a) and 2.120(a)(1), the Federal Rules of Civil Procedure are applicable to Board proceedings, and thus parties in Board proceedings are required to make initial and pre-trial disclosures. Furthermore, pursuant to Rule 26(e) a party who has made initial or pre-trial disclosures is under a duty to supplement its disclosures "if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e)(1). *See also* Fed. R. Civ. P. 26, Advisory Committee Note (1993 Amendments, Subdivision (e)).

Petitioner timely served its Initial and Pre-Trial Disclosures, which at the time of service Petitioner believed to be accurate and complete given the information available to Petitioner at that time. Petitioner promptly supplemented its Pre-Trial Disclosures when it became aware of new information on actual confusion to add Mr. Smythe, Mr. Keeler and Mr. Kristal as required by Rule 26.

Registrant's assertion that Petitioner should have also supplemented its Initial Disclosures when it supplemented its Pre-Trial Disclosures is misplaced. Petitioner made Registrant aware of these newly identified witnesses in its Supplemental Pre-Trial Disclosures. Thus, supplementation of Petitioner's Initial Disclosures was unnecessary, and indeed would have been

redundant. Fed. R. Civ. P. 26(e) (stating supplementation is unnecessary when information has “otherwise been made known to the other parties); Fed. R. Civ. P. 26, Advisory Committee Note (1993 Amendments, Subdivision (e)).

D. Petitioner Provided Reasonable Notice of Deposition of the Newly Identified Witnesses to Registrant.

The party taking a testimony deposition must give reasonable notice of the deposition to all other parties in the proceeding. 37 C.F.R. § 2.123(c). The reasonableness of notice of a deposition “is determined by the individual circumstances of each case. *Sunrider Corp. v. Raats*, 83 USPQ2d 1648, 1651, 1653 n. 7 (TTAB 2007) (citing *Duke Univ. v. Haggar Clothing, Inc.*, 54 USPQ2d 1443 (TTAB 2000)). Additionally, given the short period for taking testimony in Board proceedings, “each party is effectively on notice that any of the approximately 20 business days during a typical 30-day trial period may potentially be used for the taking of testimony depositions.” *Id.* at 1653 n. 6.

In this case, Petitioner provided nine days notice for the depositions of Mr. Keeler and Mr. Kristal; ample notice considering the relevant circumstances. *Hamilton Burr Publ’g Co. v. E.W. Commc’ns, Inc.* 216 USPQ 802, 804 n. 6 (TTAB 1982) (holding two days notice of taking testimony deposition sufficient); *Sunrider*, 83 USPQ2d at 1653 (holding 6 days constitutes reasonable notice). Although the confusion incident with Mr. Keeler and Petitioner’s uncovering of the confusion incident with Mr. Kristal occurred after the start of Petitioner’s testimony period, Petitioner was still able to provide Registrant with nine days notice. This was sufficient time for Registrant’s counsel to adequately prepare for the depositions.

Petitioner provided eight days notice for the deposition of Mr. Smythe, which is also ample notice. Registrant produced the confusion e-mails involving Mr. Smythe, and should have

anticipated his being called. If Registrant's counsel failed to do so, eight days was still ample time to prepare for Mr. Smythe's deposition.

E. Mr. Smythe Has Been Served With A Subpoena.

In its Order of October 27, 2010, the Board noted that Mr. Smythe was not served with a subpoena. *See* Order at p. 2. Petitioner had expected that Mr. Smythe, as a principal of Registrant, would appear for his testimony deposition; Registrant's counsel did not advise Petitioner to the contrary. The refusal to appear without a subpoena is further evidence of Registrant's attempt to avoid the taking of Mr. Smythe's deposition.

The Board stated that Petitioner could attempt to serve Mr. Smythe with a subpoena. *Id.*, at p. 2 n.2. Petitioner has done so, curing this issue. (See Exhibit H). Petitioner requests that it be allowed to proceed with the deposition of Mr. Smythe.

III. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests:

- (1) Registrant's Motion to Quash Notices of Deposition should be denied;
- (2) Petitioner be allowed to proceed with the depositions of Mr. Smythe, Mr. Keeler and Mr. Kristal; and
- (3) The Board re-set the close of Petitioner's testimony period, providing at least four more days to complete its testimony period and serve its Notice of Reliance.

Respectfully Submitted,

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: November 10, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**PETITIONER'S RESPONSE TO REGISTRANT'S MOTION TO QUASH NOTICES OF
DEPOSITION** was served via e-mail on counsel for Registrant on the 10th day of November,
2010 addressed as follows:

Michael G. Kelber, Esq.
mkelber@ngelaw.com
Katherine Dennis Nye, Esq
knye@ngelaw.com
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street ▪ Suite 1700
Chicago IL ▪ 60602-3801

/Philip A. Jones/

Exhibit A

Registered: December 18, 2007

Mr. Dow may testify on one or more of the following topics: usage of the PERKS and PERKSCARD Marks; the services with which the PERKS and PERKSCARD Marks are used; the existence of a likelihood of confusion between Petitioner's use and registration of the PERKS and PERKSCARD Marks and the use and registration of the PERKSPOT mark by 12 Interactive, LLC ("Registrant"), including but not limited to, the relatedness of the services, the strength of the PERKS and PERKSCARD Marks, the relatedness of the respective channels of

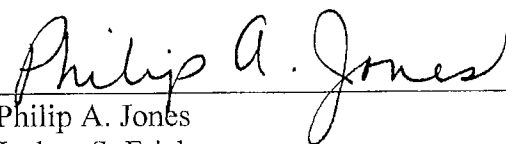
trade and customers, actual confusion; damage caused by Registrant's use and registration of PERKSPOT; and the distinctiveness of the PERKS and PERKSCARD Marks.

B. Documents, Data Compilations and Tangible Things Applicant May Use To Support Petitioner's Position.

Documents within Petitioner's possession, custody or control that Petitioner may use to support its position include the following categories: (1) advertising/marketing materials showing use and promotion of Petitioner's marks; (2) documents relating to Petitioner's services; (3) documents supporting Petitioner's trademark registrations and rights therein; (4) documents supporting the existence of a likelihood of confusion; and (5) documents supporting the distinctiveness of the PERKS and PERKSCARD Marks.

Respectfully submitted,

By:



Philip A. Jones

Joshua S. Frick

BRINKS HOFER GILSON & LIONE

NBC Tower – Suite 3600

455 North Cityfront Plaza Drive

Chicago, Illinois 60611-5599

Telephone: (312) 321-4200

Facsimile: (312) 321-4299

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PETITIONER'S INITIAL DISCLOSURES was served on counsel for Registrant by first
class mail 9th day of February, 2010 addressed as follows:

Michael G. Kelber, Esq.
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

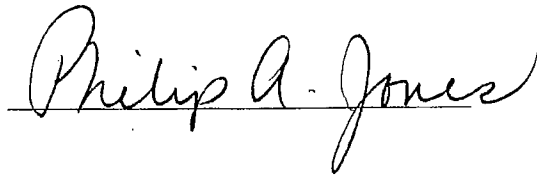
A handwritten signature in cursive script, reading "Philip A. Jones", is written over a horizontal line.

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,)	Cancellation No. 92051006
)	
Petitioner/Counter-Registrant,)	Mark: PERKSPOT
)	Reg. No. 3,355,480
v.)	
)	Mark: PERKS
12 INTERACTIVE, LLC,)	Reg. Nos. 1,786,961 & 2,580,914
)	
Registrant/Counter-Petitioner)	Mark: PERKS CARD
)	Reg. Nos. 3,156,685 & 3,210,654

REGISTRANT/COUNTER-PETITIONER'S INITIAL DISCLOSURES

In accordance with the Board's September 4, 2009 Order, 37 C.F.R. § 2.120(a) and Rule 26(a)(1) of the Federal Rules of Civil Procedure, Registrant/Counter-Petitioner, 12 Interactive LLC ("Registrant"), by and through its attorneys, Neal, Gerber & Eisenberg, LLP, hereby makes the following disclosures:

26(a)(1)(A): The name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subject of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment:

ANSWER:

Christopher Hill
4611 N. Ravenswood Ave., Suite 202
Chicago, IL 60640

Mr. Hill is likely to have discoverable information concerning: Registrant's selection and use of its PERKSPOT mark; products and services offered by Registrant in association with its PERKSPOT mark; channels of trade through which Registrant uses its PERKSPOT mark; and Registrant's federal registration of the mark PERKSPOT for use in connection with the

administration of a program for enabling participants to obtain discounts from retailers and service providers, U.S. Trademark Registration No. 3,355,480.

Registrant will supplement this disclosure in the event that it discovers additional individuals likely to have discoverable information that it may use to support its claims or defenses.

26(a)(1)(B): A copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment:

ANSWER:

Registrant may use the following categories of documents to support its claims in these proceedings:

- (1) Documents indicative of consumer perception of the generic terms PERK, CARD, and PERKCARD;
- (2) Documents identifying third party marks containing the term “perk” on the Principal Register;
- (3) Documents identifying third party use of marks containing the term “perk” by entities offering some form of a reward or volume discount plan under those marks.
- (4) Documents relating to Registrant’s selection of the mark PERKSPOT for use in association with the administration of a program for enabling participants to obtain discounts from retailers and service providers;
- (5) Documents indicative of consumer recognition of Registrant’s PERKSPOT mark;

To the extent these documents exist, they are located at either the offices of Registrant in Chicago, Illinois, or at the offices of Registrant’s counsel in these proceedings, Neal, Gerber & Eisenberg LLP. Certain documents within the categories described above may contain confidential and proprietary information that are subject to the governing protective order in this

matter. It is believed that much of the information upon which Registrant will rely will be obtained through discovery from Petitioner and third parties, and thus is not yet in Registrant's possession, custody or control. Registrant will supplement this disclosure in accordance with 37 C.F.R. § 2.120(a) and Fed. R. Civ. P. 26(e) if it discovers additional categories of documents that it may use to support its claims in these proceedings.

26(a)(1)(C): A computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered:

ANSWER: Not applicable per Board's Aug. 1, 2007 Final Rule Change Supplementary Information, § II(B).

26(a)(1)(D): For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment:

ANSWER: Not applicable per Board's Aug. 1, 2007 Final Rule Change Supplementary Information, § II(B).

Respectfully submitted,

Dated: February 9, 2010

/Katherine Dennis Nye/
One of the Attorneys for Registrant,
12 Interactive, LLC

Michael G. Kelber, Esq.
Katherine Dennis Nye, Esq.
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Katherine Dennis Nye, an attorney, state that I served a copy of *Registrant/Counter-Petitioner's Initial Disclosures* upon counsel for Petitioner-Counter Registrant:

Philip A. Jones
BRINKS HOFER GILSON & LIONE
455 N. Cityfront Plaza Dr., Ste 3600
Chicago, IL 60611-5599

via First Class U.S. Mail on this 9th day of February, 2010.

/Katherine Dennis Nye/
Katherine Dennis Nye

NGEDOCs: 1663332.1

Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Cancellation No. 92051006
Petitioner,	:	
	:	Mark: PERKSPOT
v.	:	
	:	Registration No. 3,355,480
12 INTERACTIVE, LLC,	:	
	:	Registered: December 18, 2007
Registrant.	:	

**REGISTRANT'S OBJECTIONS & RESPONSES TO PETITIONER'S FIRST SET OF
INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, registrant, 12 Interactive, LLC., by its attorneys, Neal, Gerber & Eisenberg LLP, hereby responds to Opposer's First Set of Interrogatories.

GENERAL OBJECTIONS

Each of the following general objections is incorporated into each specific response below as if fully set forth therein:

1. Registrant objects to the Interrogatories to the extent that they seek information subject to the attorney-client privilege, the work product doctrine, or any other recognized privilege or immunity.

2. Registrant objects to the Requests to the extent that they seek the production of information that is in the public domain or public record, are already in the possession, custody or control of Petitioner, or are equally available to Petitioner.

3. Registrant objects to the Interrogatories to the extent that they seek information that is not relevant to these proceedings or is not reasonably calculated to lead to the discovery of admissible or pertinent information.

4. Registrant objects to the Interrogatories to the extent that they purport to impose upon Registrant requirements that differ from or exceed those imposed by the Trademark Rules and Federal Rules of Civil Procedure.

5. Registrant objects to each Interrogatory as overly broad and unduly burdensome to the extent it seeks information without limits as to time and geography.

6. Registrant's responses shall not be construed as waiving, and Registrant expressly reserves: (a) any or all objections to confidentiality, relevancy, materiality, privilege and admissibility of evidence for any purpose; (b) the right to object to the use of any documents or information that may be provided, or the subject matter thereof, for any purpose and on any grounds; and (c) the right to object on any ground at any time to further discovery involving or relating to the subject matter of the Interrogatories.

7. Registrant's partial response to any Interrogatory is not a waiver of its Objections or right to object to any additional, supplemental, or further Interrogatory, or part thereof, but is instead offered in an effort to resolve a potential discovery dispute.

Without waiving any of the foregoing general objections, Registrant responds to the Interrogatories as follows, incorporating each and every one of the foregoing general objections into each respective response below. Registrant expressly reserves the right to amend these responses and supplement the associated production of documents in the event that any additional non-privileged, responsive information or documents are discovered

1. Describe in detail the manner in which Registrant uses or intends to use Registrant's Mark in connection with the services listed in the Subject Registration.

Response:

Registrant objects to this interrogatory under the General Objections and as vague and ambiguous with respect to the term "manner." Subject to, and without waiving these objections, Registrant states that it uses and intends to use its mark in connection with the administration of a program for enabling participants to obtain discounts from retailers and service providers. Specifically, Registrant states that through its proprietary technology platform, Registrant provides employees, or association members, with a single point of access for specialty benefits, personal insurance products, and discounts on consumer goods and services. Registrant further states that it uses its mark in conjunction with its website, available at www.perkspot.com. Further, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to representative samples of use that Registrant will produce in response to Petitioner's Requests for Production of Documents and Things upon entry of a suitable protective order.

2. Separately list each product and service in connection with which Registrant has used Registrant's Mark, and separately for each product and service state the date Registrant's Mark was first used in commerce, the location of each first use, the circumstances surrounding each first use, and identify the individuals with knowledge concerning the subject of this interrogatory.

Response:

Registrant objects to this interrogatory under the General Objections and as overbroad and unduly burdensome. Registrant states that it uses and intends to use its mark in connection with the administration of a program for enabling participants to obtain discounts from retailers and service providers. Specifically, Registrant states that through its proprietary technology platform, Registrant provides employees, or association members, with a single point of access for specialty benefits, personal insurance products, and discounts on consumer goods and services. Registrant states that it has used its mark in commerce since August, 2006. Registrant

further states that Christopher Hill is the individual most knowledgeable concerning the subject of this interrogatory.

3. Describe in detail Registrant's business of "manag[ing] employee discount programs" as set forth in Paragraph 1 of Registrant's Counterclaim, including identifying representative examples of the "Fortune 500 companies, state and local governments, and other large employers" mentioned in that paragraph.

Response:

Registrant objects to this interrogatory under the General Objections. Subject to, and without waiving these objections, Registrant states that, through its proprietary technology platform, Registrant provides employees, or association members, with a single point of access for specialty benefits, personal insurance products, and discounts on consumer goods and services. Registrant further states that representative examples of its clients include DirecTV, Solo Cup, BNSE Railway, Navteq, LexisNexis CDW, Advocate Health Care, AirTran, Rush University Medical Center, TransUnion, DeVry University, and Papa John's Pizza.

4. Describe in detail the types of retailers and service providers which participate in Registrant's program as set forth in Paragraph 2 of Registrant's Counterclaim, including identifying representative examples of such retailers and service providers.

Response:

Registrant objects to this interrogatory under the General Objections, and as vague and ambiguous as to what is meant by "types of retailers and service providers." Subject to, and without waiving these objections, Registrant states that representative examples of merchants participating in its program include Dell, Blue Nile, Target.com, Southwest Airlines Vacations, Walt Disney, Costco Wholesale Corp., United Vacations, Ann Taylor Stores Corp., Turbo Tax, Brooks Brothers, Panasonic, and 1-800-Flowers.com.

5. Describe when and how Registrant first became aware of Petitioner and Petitioner's Marks, and the circumstances relating to Registrant's knowledge of the registered status of Petitioner's Marks.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this interrogatory on the basis that it is vague as to what is meant by "registered status." Subject to and without waiving these objections, Registrant states that it first became aware of Petitioner and Petitioner's Marks when it received a letter from Paul Brown, Esq., dated April 3, 2007.

6. Identify whether any search was conducted by or on behalf of Registrant concerning the use and/or registration of Registrant's Mark, and whether any of Petitioner's Marks were referenced in any such searches.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Subject to and without waiving these objections, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to the responsive documents that will be produced in response to Petitioner's Requests for Production of Documents and Things upon entry of a suitable protective order.

7. Identify and describe each communication, whether in electronic form, hard copy, or verbal, received by Registrant or Registrant's counsel that refers or relates to Petitioner, Petitioner's Marks, Registrant's Mark or this cancellation proceeding, including the author(s), recipient(s), date, and substance of each such communication.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this interrogatory to the extent it seeks information in the public domain or public record, or already in the possession, custody or control of Petitioner, or equally available to Petitioner. Further, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to responsive documents that Registrant will produce in response to Petitioner's Requests for Production of Documents and Things upon entry of a suitable protective order.

8. Identify and describe all documents and correspondence that refer to, relate to, or consist of communications between Registrant or Registrant's counsel and another person concerning Petitioner, Petitioner's Marks, Registrant's Marks or this cancellation proceeding, including the author(s), recipient(s), date, and substance of such documents and correspondence.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this interrogatory to the extent it seeks information already in the possession of Petitioner. Registrant further objects to this interrogatory on the basis that it is duplicative of Interrogatory No. 7. Further, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to responsive documents that Registrant will produce in response to Petitioner's Requests for Production of Documents and Things upon entry of a suitable protective order.

9. Describe in detail the specific reasons for and circumstances surrounding Registrant's selection, adoption, use and application to register Registrant's Mark.

Response:

Registrant objects to this interrogatory under the General Objections and as overly broad and unduly burdensome and as not reasonably calculated to lead to the discovery of admissible or pertinent information. Subject to and without waiving these objections, Registrant states that Registrant's Mark incorporates the generic term "perk" and connotes a source for such "perks."

10. Identify any and all alternative marks considered by Registrant other than Registrant's Mark.

Response:

Registrant objects to this interrogatory under the General Objections and as overly broad and unduly burdensome and as not reasonably calculated to lead to the discovery of admissible or pertinent information.

11. Identify the manner by which Registrant's products or services offered or intended to be offered under Registrant's Mark are marketed, promoted, offered for sale and sold or intended to be marketed, promoted, offered for sale and sold.

Response:

Registrant objects to this interrogatory under the General Objections. Subject to and without waiving these objections, Registrant states that its services offered under Registrant's Mark are marketed through the domain name and website <www.perkspot.com> and via phone, email, and in-person solicitations.

12. Identify all inquiries received by Registrant regarding whether the services Registrant offers or intend to offer under Registrant's Mark are in any manner associated or connected with Petitioner, including by giving the name of the person making the inquiry, the date of the inquiry, and the circumstances under which the inquiry was made.

Response:

Registrant objects to this interrogatory under the General Objections. Subject to and without waiving these objections, Registrant states that it has received an inquiry from Lisa Francour on May 1, 2007, under the circumstances that she had received an email from Petitioner and an email from Registrant and inquired as to whether they were the same company.

13. For all products and services sold or intended to be sold under Registrant's Mark, (a) describe the trade channels through which goods and services are or will be marketed and sold under Registrant's Mark; (b) identify the types or classes of clients to whom the products and services are or will be sold; (c) describe how, or the manner in which, the prospective clients select Registrant to provide these products and services; and (d) describe the purpose and function of the products and services, and the types of facilities, environments and/or settings in which the products and services are used or will be used.

Response:

Registrant objects to this interrogatory under the General Objections. Subject to and without waiving these objections:

(a) Registrant states that its services are sold via its website, www.perkspot.com, email, phone, and in-person solicitations;

(b) Registrant objects to this interrogatory as duplicative of Interrogatory No. 3;

(c) Registrant objects to this interrogatory as vague and ambiguous as to what is meant by "types or classes of clients." Registrant further states, after a reasonable inquiry, that the information that it can readily obtain is insufficient to determine how any particular client selects Registrant; and

(d) Registrant objects to this interrogatory as vague and ambiguous as to what is meant by "types of facilities, environments and/or settings in which the products and services are used or will be used." Registrant further states that the purpose of its services is enabling participants to obtain discounts from retailers and service providers.

14. For all products and services marketed and sold or intended to be marketed and sold under Registrant's Mark, (a) separately identify the specific methods by which each product or service is or will be advertised and promoted under Registrant's Mark, and (b) separately state the dates on which each such method was first used or is intended to be first used by Registrant for each product or service.

Response:

Registrant objects to this interrogatory under the General Objections. Subject to and without waiving these objections:

(a) Registrant objects to this interrogatory on the grounds that it is premature and uncertain to identify the methods by which Registrant's services will be advertised and promoted. Subject to and without waiving the foregoing objections, and as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant further directs Petitioner to the representative samples of advertising that will be produced upon entry of a suitable protective order from which Registrant may derive or ascertain the answer to this interrogatory.

(b) Registrant objects to this interrogatory on the grounds that it is overly broad and unduly burdensome and unlikely to lead to the discovery of admissible evidence.

15. Describe in detail Registrant's marketing plans relating to the sale of products and services under Registrant's Mark, including the geographic areas of such sales and the advertising and promotional activities pertaining thereto.

Response:

Registrant objects to this interrogatory under the General Objections and objects to this Interrogatory on the basis that it is premature because it calls for Registrant to describe its "plans."

16. Identify and describe the complete factual basis for Registrant's second Affirmative Defense as set forth in Registrant's Answer.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

17. Identify and describe the complete factual basis for Registrant's third Affirmative Defense as set forth in Registrant's Answer.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

18. Identify and describe the complete factual basis for Registrant's fourth Affirmative Defense as set forth in Registrant's Answer.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39

U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

19. Identify and describe the complete factual basis for Registrant's fifth Affirmative Defense as set forth in Registrant's Answer.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

20. Identify and describe the complete factual basis for Registrant's sixth Affirmative Defense as set forth in Registrant's Answer.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

21. Identify and describe the complete factual basis for Registrant's assertion in paragraph 6 of Registrant's Counterclaims as set forth in Registrant's Answer that the word

“perk” is merely descriptive of a volume discount given to consumers in exchange for buying certain products or services.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

22. Identify and describe the complete factual basis for Registrant’s assertion in paragraph 7 of Registrant’s Counterclaims as set forth in Registrant’s Answer that Petitioner’s PERKS mark (Reg. No. 3,210,654) is merely descriptive.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving these objections, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to dictionary and Internet search engine reports which support its contention that Petitioner’s PERKS mark is merely descriptive that Petitioner will produce.

23. Identify and describe the complete factual basis for Registrant's assertion in paragraph 8 of Registrant's Counterclaims as set forth in Registrant's Answer that the term "perks card" is merely descriptive of a card used in association with perks.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Subject to and without waiving these objections, Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving these objections, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to dictionary and Internet search engine reports which support its contention that the term "perks card" is merely descriptive that Petitioner will produce.

24. Identify and describe the complete factual basis for Registrant's assertion in paragraph 9 of Registrant's Counterclaims as set forth in Registrant's Answer that Petitioner's PERKSCARD mark (Reg. No. 3,156,685) is merely descriptive.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving these objections, as permitted by Federal Rule of Civil Procedure 33(d) and 37 C.F.R. §2.120, Registrant directs Petitioner to

dictionary and Internet search engine reports which support its contention that Petitioner's PERKSCARD mark is merely descriptive that Petitioner will produce.

25. Identify and describe the complete factual basis for Registrant's assertion in paragraph 10 of Registrant's Counterclaims as set forth in Registrant's Answer that "providing volume discount buying services" or "providing volume discounts for consumer products and services via a magnetically encoded card" would be perceived by the general public as providing "perks."

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

26. Identify and describe the complete factual basis for Registrant's assertion in paragraph 11 of Registrant's Counterclaims as set forth in Registrant's Answer that Petitioner's PERKS marks (Reg. Nos. 1,786,961 and 3,210,654) are generic.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

27. Identify and describe the complete factual basis for Registrant's assertion in paragraph 12 of Registrant's Counterclaims as set forth in Registrant's Answer that the term "perk card" has come to be known and used by the general public as a term to define a card used to distribute perks and "perks" is commonly used to describe "volume discounts for consumer products and services."

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002)

28. Identify and describe the complete factual basis for Registrant's assertion in paragraph 13 of Registrant's Counterclaims as set forth in Registrant's Answer that Petitioner's PERKSCARD marks (Reg. Nos. 2,580,914 and 3,156,685) are generic.

Response:

Registrant objects to this interrogatory under the General Objections and as designed to seek information subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this interrogatory on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

29. Identify the individuals who supplied information and have knowledge concerning each of the above interrogatories.

Response:

Registrant objects to this interrogatory under the General Objections and as overbroad and unduly burdensome with regard to "individuals who...have knowledge." Subject to, and without waiving these objections, Registrant states Christopher Hill supplied information concerning these interrogatories and is the person most knowledgeable regarding their content.

By: Kate Dennis Nye
One of the Attorneys for Registrant,
12 Interactive, LLC

Michael G. Kelber
Katherine Dennis Nye
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**REGISTRANT'S OBJECTIONS & RESPONSES TO PETITIONER'S FIRST SET OF
INTERROGATORIES** was served on counsel for Petitioner at the following address by U.S.
mail, postage prepaid, on August 13, 2010.

Philip A. Jones
Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, Illinois 60610

By: Kate Dennis Nye
One of the Attorneys for Registrant,
12 Interactive, LLC

Michael G. Kelber
Katherine Dennis Nye
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

VERIFICATION

I, Christopher Hill, declare under penalty of perjury that I am the duly authorized officer of 12 Interactive, LLC for the purpose of making this Verification, that I have read the foregoing, Registrant's Objections & Responses to Petitioner's First Set of Interrogatories and, that the statements contained therein are true and correct to the best of my knowledge, information and belief.

12 Interactive, LLC
by Christopher Hill

Date:

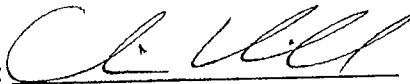


Exhibit D

COUCH/BRAUNSDORF AFFINITY, INC.,	:		
	:	Cancellation No.	92051006
Petitioner,	:		
	:	Mark:	PERKSPOT
v.	:		
	:	Registration No.	3,355,480
12 Interactive, LLC,	:		
	:	Registered:	December 18, 2007
Registrant.	:		

2. Registrant objects to the Requests to the extent that they seek the production of documents that are in the public domain or public record, are already in the possession, custody

or control of Petitioner, or are equally available to Petitioner. Registrant further objects to the Requests to the extent that they seek the production of documents that are in the custody or control of any third party or entity.

3. Registrant objects to the Requests to the extent that they seek the production of documents pertaining to matters that are not relevant to these proceedings or are not reasonably calculated to lead to the discovery of admissible or pertinent information.

4. Registrant objects to the Requests to the extent that they purport to impose upon Registrant requirements that differ from or exceed those imposed by the Trademark Rules and Federal Rules of Civil Procedure.

5. Registrant objects to each Request as overly broad and unduly burdensome to the extent it seeks documents or information without limits as to time and geography.

6. Registrant's responses shall not be construed as waiving, and Registrant expressly reserves: (a) any or all objections to confidentiality, relevancy, materiality, privilege and admissibility of evidence for any purpose; (b) the right to object to the use of any documents or information that may be provided, or the subject matter thereof, for any purpose and on any grounds; and (c) the right to object on any ground at any time to further discovery involving or relating to the subject matter of the Requests.

7. A statement in any response below that documents will be produced is not a representation that documents responsive to the Request actually exist, but rather means that any non-privileged documents Registrant has committed to produce that are found after a reasonable search will be produced.

Without waiving any of the foregoing general objections, Registrant responds to the Requests as follows, incorporating each and every one of the foregoing general objections into

each respective response below. Registrant expressly reserves the right to amend these responses and supplement the associated production of documents in the event that any additional non-privileged, responsive documents are discovered.

1. All documents and things that relate to or refer to Registrant's use or intended use of Registrant's Mark, including representative samples of specimens of use of Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of Registrant's sales materials that disclose the nature of Respondent's business upon entry of a suitable protective order.

2. All documents and things that describe Registrant and the nature of its business.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of use of Registrant's mark upon entry of a suitable protective order.

3. All documents and things that relate to or refer to any goods or services that Registrant has sold, sells or intends to offer for sale under Registrant's Mark, including documents sufficient to identify the characteristics, purpose(s), nature and function of, and intended uses of such goods or services.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent it is duplicative of Request No. 1.

4. All documents and things that describe Registrant's "employee discount program" set forth in Paragraph 1 of Registrant's Counterclaim, and the "administration of a program for enabling participants to obtain discounts from retailers and service providers" as set forth in Paragraph 2 of Registrant's Counterclaim.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent it is duplicative of Request No. 2.

5. All documents and things that relate to or refer to the trade channels through which goods or services offered under Registrant's Mark are sold or intended to be sold.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request on the basis that it is vague and ambiguous as to what documents or things would "relate or refer to the trade channels through which goods or services offered."

6. All documents and things that identify or describe the nature of the customers to which Registrant markets its goods or services under Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is vague as to what is meant by "nature of the customers." Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are

subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

7. All documents and things that relate to or refer to any market research or other studies or investigations, whether formal or informal, regarding the types of individuals and the classes of consumers who use goods or services sold or intended to be sold under Registrant's mark.

RESPONSE:

Registrant objects to this Request because it is vague as to what is meant by "types of individuals and the classes of consumers." Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

8. All documents and things that relate to or refer to or reflect the dollar volume of sales of goods or services sold under Registrant's Mark in the United States on an annual basis from the first such sales to date.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request because it seeks documents Registrant considers proprietary/confidential prior to the entry of a suitable protective order.

9. All documents and things that relate to or refer to the question of whether Registrant's use or intended use of Registrant's Mark for the services identified in the Subject Registration gives rise to a likelihood of confusion with respect to Petitioner's use of Petitioner's Marks.

RESPONSE:

Registrant objects to this Request because it is unintelligible. Registrant also objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

10. All documents and things that relate to or refer to the meaning or intended meaning of Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity.

11. All documents and things that relate to or refer to consumer perception or intended consumer perception of Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity.

12. All documents and things that Registrant has used or intends to use in connection with the goods or services currently sold under Registrant's Mark or which Registrant intends to offer for sale under Registrant's Mark, including but not limited to flyers, direct mail pieces, signage, posters, newspaper advertisements, magazine advertisements, catalogs, circulars, leaflets, brochures, business cards, stationery, sales materials, letterhead, Internet websites, and any other publicly distributed materials, which contain, refer to or include Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1 and 3. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant's mark upon entry of a suitable protective order.

13. All documents and things that refer to, relate to, or consist of communications, either internally or between Registrant and another person, concerning this Cancellation Proceeding, Petitioner or Petitioner's Marks.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the

attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are already in the possession, custody or control of Petitioner or equally available to Petitioner. Registrant further objects to this Request to the extent that it seeks documents not relevant to the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence.

14. All documents and things that refer to, relate to, or consist of communications, either internally or between Registrant and another person, concerning Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are already in the possession, custody or control of Petitioner or equally available to Petitioner. Registrant further objects to this Request to the extent that it seeks documents not relevant to the claims or defenses of the parties nor reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this Request to the extent that it is duplicative of Request No. 13.

15. All documents and things that refer to, relate to, or illustrate the manner in which Registrant used, uses, or intends to use Registrant's Mark in connection with any goods or services sold or intended to be sold under Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1 and 3. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of use of Registrant's mark upon entry of a suitable protective order.

16. All documents and things that relate to or refer to Petitioner's Marks or the registrations covering Petitioner's Marks.

RESPONSE:

Registrant objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, or that are already in the possession, custody or control of Petitioner, equally available to Petitioner. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will produce responsive documents upon entry of a suitable protective order.

17. All magazine articles, newspaper articles or other publications which relate to or refer to any goods or services sold or intended to be sold under Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1, 3, and 15.

18. All documents and things that relate to or refer to Registrant's knowledge of Petitioner, Petitioner's Marks and the registered status of Petitioner's Marks, including the circumstances relating thereto.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will produce responsive documents upon entry of a suitable protective order.

19. All documents and things that relate to or refer to when Registrant first became aware of Petitioner, Petitioner's Marks, the registered status of Petitioner's Marks, and the circumstances relating to such knowledge.

RESPONSE:

Registrant objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, or that are already in the possession, custody or control of Petitioner, equally available to Petitioner. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will produce responsive documents upon entry of a suitable protective order.

20. All documents and things that relate to or refer to any surveys, polls and any market research that has been conducted concerning Petitioner's Marks, the individuals with knowledge concerning any such surveys and market research, and the nature and methodology of any such surveys and market research, including all questionnaires and tabulations.

RESPONSE:

Without waiving any of its general objections, Registrant states that it has no responsive documents in its possession or control at this time.

21. All documents that refer or relate to the creation, selection and adoption of Registrant's Mark.

RESPONSE:

Registrant objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks the discovery of documents that

Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board.

22. All documents that refer or relate to any market research, study or survey conducted or considered by or on behalf of Registrant regarding Registrant's Mark.

RESPONSE:

Without waiving any of its general objections, Registrant states that it has no responsive documents in its possession or control at this time.

23. All documents that refer or relate to any search or investigation concerning Registrant's Mark including trademark search reports, opinions, and investigations.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will produce responsive documents upon entry of a suitable protective order.

24. All documents sufficient to reflect the first use and first use in U.S. commerce of Registrant's Mark.

RESPONSE:

Registrant objects to this Request on the basis that it is not likely to lead to the discovery of admissible evidence. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide documents sufficient to show the first use of Registrant's Mark in U.S. commerce upon entry of a suitable protective order, if any such documents exist under Registrant's possession, custody, and control.

25. All documents sufficient to identify (by name, address, principal contact, phone and fax) all customers or prospective customers of goods or services in connection with which Registrant has used or intends to use Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request because it is not reasonably calculated to lead to the discovery of admissible or pertinent information. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board.

26. All documents that refer or relate to the sale or offering for sale of goods or services in connection with which Registrant has used Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1, 3, 15, and 17. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of use of Registrant's Mark upon entry of a suitable protective order.

27. All documents that refer or relate to past, present or proposed advertising or promotional materials bearing Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant also objects to this Request to the extent that seeks documents that refer or relate to "proposed advertising," which are premature and are unlikely to lead to the discovery of admissible evidence. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a

suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant's Mark upon entry of a suitable protective order.

28. All documents that refer or relate to publicity in any medium, including press releases and magazine and newspaper articles concerning Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1, 3, 15, 17, 26, and 27.

29. For all goods or services in connection with which Registrant has used or intends to use Registrant's Mark, all documents sufficient to identify (a) the types or classes of individuals who purchase or will purchase the goods or services, and (b) the manner in which these goods or services have been or will be marketed and promoted to purchasers and prospective purchasers, and (c) the markets and channels of trade through which these goods or services have been or will be marketed and promoted.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request because it is vague and ambiguous as to what is meant by "types or classes of individuals," and "manner." Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant also objects to this Request to the

extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant's Mark upon entry of a suitable protective order.

30. All documents that refer or relate to any legal opinion that was ever sought or obtained with respect to the registration or use of Registrant's Mark, including without limitation any risk associated therewith and including documents sufficient to reflect (a) the date the opinion was rendered and whether the opinion was oral or written, (b) the person or persons who rendered the opinion, and all individuals who have seen the opinion or been informed of its content, and (c) the substance of each such opinion.

RESPONSE:

Registrant objects to this Request because it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine.

31. All publications, advertisements or marketing materials in which Registrant has advertised or marketed goods or services on or in connection with which Registrant has used or intends to use Registrant's Mark including, for example, all newspaper advertisements, magazine advertisements, trade journals, radio and/or television commercials, flyers, direct mail pieces, signage, posters, catalogs, circulars, leaflets, brochures, sales materials, letterhead, and any other publicly distributed materials.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant also objects to this Request to the extent that it seeks documents that are in the public domain or public record, already in the possession, custody or control of Petitioner, equally available to Petitioner, or that are in the custody or control of any third party or entity.

Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1, 3, 12, 15, 17, 26, 27, and 28. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant's Mark upon entry of a suitable protective order.

32. All documents and things that relate to trade shows Registrant has attended in the past five years.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent that it is not reasonably calculated to lead to the discovery of admissible or pertinent information. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections and its general objections, Registrant will produce responsive documents upon entry of a suitable protective order.

33. All documents and things that relate to sales pitches, proposals for business, RFP responses or the like made by Registrant under Registrant's Mark.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent that it is duplicative of Requests Nos. 1, 3,

12, 15, 17, 26, 27, and 28. Registrant also objects to this Request to the extent that it seeks the discovery of documents that Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant's Mark upon entry of a suitable protective order.

34. All documents that relate to Registrant's second Affirmative Defense as set forth in Registrant's Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce responsive documents upon entry of a suitable protective order.

35. All documents that relate to Registrant's third Affirmative Defense as set forth in Registrant's Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce documents showing the terms “perks” and “perks card” are merely descriptive.

36. All documents that relate to Registrant’s fourth Affirmative Defense as set forth in Registrant’s Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and

its general objections, Registrant will produce a list of registrations in International Class 35 comprised of the term “perks.”

37. All documents that relate to Registrant’s fifth Affirmative Defense as set forth in Registrant’s Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce documents showing the terms “perks” and “perks card” are generic.

38. All documents that relate to Registrant’s sixth Affirmative Defense as set forth in Registrant’s Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12.

Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce a list of registrations in International Class 35 comprised of the term “perks.”

39. All documents and things that relate to Registrant’s factual assertions in its first counterclaim as set forth in Registrant’s Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce representative samples of use of Registrant’s Mark, Office Actions received by Petitioner in 2008, and assignments of the PERKS 1 and PERKSCARD 1 registrations upon entry of a suitable protective order.

40. All documents and things that relate to Registrant's factual assertions in its second counterclaim as set forth in Registrant's Answer.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant further objects to this Request to the extent that it is duplicative of Requests No. 12. Registrant considers to be proprietary and/or confidential prior to the entry of a suitable protective order by the Trademark Trial and Appeal Board. Registrant objects to this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002). Subject to and without waiving the foregoing objections and its general objections, Registrant will produce documents showing the terms "perks" and "perks card" are merely descriptive.

41. All documents that refer or relate to the subject matter covered in Petitioner's First Set of Interrogatories in this Cancellation Proceeding, including all documents that were requested to be identified in the interrogatories, that support Registrant's responses to the interrogatories, or that were reviewed in connection with the preparation of Registrant's responses to the interrogatories.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege.

42. All documents that Registrant intends to rely on in this Cancellation Proceeding.

RESPONSE:

Registrant objects to this Request because it is overly broad and unduly burdensome. Registrant further objects to this Request to the extent it seeks documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other recognized privilege. Registrant states that it will not answer this Request on the basis that it is improper under TBMP 414(7). *Miliken & Co. v. Image Industries, Inc.*, 39 U.S.P.Q.2d 1192, 1197 (T.T.A.B. 1996); *Time Warner Entertainment Co. v. Jones*, 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002).

By: Kate Dennis Nye
One of the Attorneys for Registrant,
Registrant, LLC

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Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**REGISTRANT'S OBJECTIONS & RESPONSES TO PETITIONER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for
Registrant at the following address by U.S. mail, postage prepaid, on August 13, 2010.

Philip A. Jones
Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

By: Kate Dennis Nye
One of the Attorneys for Registrant,
Registrant, LLC

Michael G. Kelber
Katherine Dennis Nye
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Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

Exhibit E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	Cancellation No.	92051006
	:		
Petitioner,	:	Mark:	PERKSPOT
	:		
v.	:	Registration No.	3,355,480
	:		
12 INTERACTIVE, LLC,	:	Registered:	December 18, 2007
	:		
Registrant.	:		

**REGISTRANT'S OBJECTIONS & RESPONSES TO PETITIONER'S FIRST SET OF
REQUESTS FOR ADMISSION**

Registrant 12 Interactive, LLC, by and through its attorneys, Neal, Gerber & Eisenberg, LLP, hereby responds to Petitioner's First Request for Production of Documents and Things (the "Requests").

GENERAL OBJECTIONS

Each of the following general objections is incorporated into each specific response below as if fully set forth therein:

1. Registrant objects to the Requests to the extent that they seek information subject to the attorney-client privilege, the work product doctrine, or any other recognized privilege or immunity.
2. Registrant objects to the Requests to the extent that they seek the production of information that is in the public domain or public record, are already in the possession, custody or control of Petitioner, or are equally available to Petitioner.
3. Registrant objects to the Requests to the extent that they seek information that is not relevant to these proceedings or is not reasonably calculated to lead to the discovery of admissible or pertinent information.

4. Registrant objects to the Requests to the extent that they purport to impose upon Registrant requirements that differ from or exceed those imposed by the Trademark Rules and Federal Rules of Civil Procedure.

5. Registrant objects to each Request as overly broad and unduly burdensome to the extent it seeks information without limits as to time and geography.

6. Registrant's responses shall not be construed as waiving, and Registrant expressly reserves: (a) any or all objections to confidentiality, relevancy, materiality, privilege and admissibility of evidence for any purpose; (b) the right to object to the use of any documents or information that may be provided, or the subject matter thereof, for any purpose and on any grounds; and (c) the right to object on any ground at any time to further discovery involving or relating to the subject matter of the Requests.

7. Registrant's partial response to any Request is not a waiver of its Objections or right to object to any additional, supplemental, or further Request, or part thereof, but is instead offered in an effort to resolve a potential discovery dispute.

Without waiving any of the foregoing general objections, Registrant responds to the Requests as follows, incorporating each and every one of the foregoing general objections into each respective response below. Registrant expressly reserves the right to amend these responses and supplement the associated production of documents in the event that any additional non-privileged, responsive information or documents are discovered

1. Registrant is not a licensee of Petitioner's Marks.

Answer:

Subject to and without waiving its general objections, admitted.

2. Registrant first became aware of Petitioner's Marks prior to filing its application to register Registrant's Mark.

Answer:

Subject to and without waiving its general objections, denied.

3. Registrant first became aware or [sic] Petitioner's Marks after filing its application to register Registrant's Mark.

Answer:

Subject to and without waiving its general objections, admitted.

4. Registrant first became aware of the registered status of Petitioner's Marks prior to filing its application to register Registrant's Mark.

Answer:

Registrant objects to the Request on the basis that it is vague as to what is meant by "registered status." Registrant states that it was without knowledge regarding the "registered status" of Petitioner's Marks prior to filing its application to register Registrant's Marks. Therefore, subject to and without waiving its general objections or the foregoing, and to the extent a response is necessary, denied.

5. Registrant first became aware of the registered status of Petitioner's Marks after filing its application to register Registrant's Mark.

Answer:

Registrant objects to the Request on the basis that it is vague as to what is meant by "registered status." Registrant states that it was without knowledge regarding the "registered status" of Petitioner's Marks after filing its application to register Registrant's Marks. Therefore,

subject to and without waiving its general objections or the foregoing, and to the extent a response is necessary, denied.

6. Registrant currently administers a program under Registrant's Mark for enabling participants to obtain discounts from retailers and service providers.

Answer:

Registrant objects to the Request on the basis that it is vague as to what is meant by "participants." Therefore, subject to and without waiving its general objections or the foregoing, and to the extent a response is necessary, denied.

7. As used in connection with the services identified in the Subject Registration, Registrant's Mark so resembles Petitioner's Marks as to be likely to cause confusion, to cause mistake, or to deceive as to the source of Registrant's services offered under Registrant's Mark.

Answer:

Subject to and without waiving its general objections, denied.

8. The services listed in the Opposed Application are directly competitive with the services listed in the registrations for Petitioner's Marks.

Answer:

In addition to its general objections, Registrant objects to this Request to the extent that it is not clear what Petitioner means by "Opposed Application." Therefore, subject to and without waiving any of its objections, and to the extent that a response is necessary, denied.

9. Registrant's services offered under Registrant's Mark and Petitioner's services offered under Petitioner's Marks are marketed towards the same consumers.

Answer:

Subject to and without waiving its general objections, Registrant further states that it is without knowledge sufficient to admit or deny whether Registrant's services offered under Registrant's Mark and Petitioner's services offered under Petitioner's Marks are marketed toward any same consumer. Therefore, subject to and without waiving any of its objections, and to the extent that a response is necessary, denied.

10. Members of the relevant customer base have come to associate Petitioner's Marks with Petitioner and Petitioner's Services.

Answer:

In addition to its general objections, Registrant objects to this Request to the extent that it is not clear what Petitioner means by "relevant customer base." Therefore, subject to and without waiving any of its objections, and to the extent that a response is necessary, denied.

11. Registrant has competed against Petitioner to sell Registrant's services.

Answer:

In addition to its general objections, Registrant objects to this Request to the extent that it is vague and ambiguous what Petitioner means by "competed against Petitioner to sell Registrant's services." Therefore, subject to and without waiving any of its objections, and to the extent that a response is necessary, denied.

By: Kate Dennis Fye
One of the Attorneys for Registrant,
12 Interactive, LLC

Michael G. Kelber
Katherine Dennis Nye
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**REGISTRANT'S OBJECTIONS & RESPONSES TO PETITIONER'S FIRST SET OF
REQUESTS FOR ADMISSION** was served on counsel for Petitioner at the following address
by U.S. mail, postage prepaid, on August 13, 2010.

Philip A. Jones, Esq.
Brinks Hofer Gilson & Lione
P.O. Box 10395
Suite 1700
Chicago, Illinois 60610

By: Katherine Dennis Nye
One of the Attorneys for Registrant,
12 Interactive, LLC

Michael G. Kelber
Katherine Dennis Nye
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Dated: August 13, 2010

Exhibit F

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:		
	:	Cancellation No.	92051006
Petitioner,	:		
	:	Mark:	PERKSPOT
v.	:		
	:	Registration No.	3,355,480
12 INTERACTIVE, LLC,	:		
	:	Registered:	December 18, 2007
Registrant.	:		

PETITIONER'S PRETRIAL DISCLOSURES

Petitioner, Couch/Braunsdorf Affinity, Inc. ("Petitioner"), pursuant to Trademark Rule 2.121(e), 37 C.F.R. § 2.121(e), hereby makes the following pretrial disclosures. Registrant, 12 Interactive, LLC ("Registrant") has failed to produce any documents in response to Petitioner's document requests, has withheld a significant portion of responsive information called for by Petitioner's interrogatories, and has not properly answered some of Petitioner's requests for admission. As a result, Petitioner reserves the right to supplement these pretrial disclosures based on Registrant's future production of documents, supplementation of interrogatory responses and proper answers to Petitioner's requests for admission. Petitioner reserves the right to supplement these pretrial disclosures, should additional information become available.

I. WITNESSES WHOSE TESTIMONY PETITIONER EXPECTS TO PRESENT

- (1) Bob Dow
President
Perks Group
11 Oval Drive
Islandia, NY 11749

Subject: Mr. Dow who is the President of Perks Group, an entity related to Petitioner, is expected to testify on some or all of the following topics: Information on, and the history of,

Petitioner, its business and its brands; Petitioner's PERKS and PERKSCARD marks ("Petitioner's Marks"); the strength and distinctiveness of Petitioner's Marks; Petitioner's current and historical use of Petitioner's Marks; Petitioner's ownership of Petitioner's Marks; Petitioner's priority of use; Petitioner's registrations; the recognition of Petitioner's Marks within the relevant industry; the services Petitioner renders under Petitioner's Marks; the existence of a likelihood of confusion between Petitioner's use and registration of Petitioner's Marks and the use and registration of the PERKSPOT mark by 12 Interactive, LLC ("Registrant"), including but not limited to, similarities of the marks, the relatedness of the services, the strength of Petitioner's Marks, the relatedness of the respective channels of trade and customers, market interface between Petitioner and Registrant, and the extent of confusion; actual confusion resulting from Registrant's use of the PERKSPOT mark; other uses of PERK by Registrant; and the damage caused by Registrant's activities, including the use and registration of the PERKSPOT mark.

II. WITNESSES WHOSE TESTIMONY PETITIONER MAY PRESENT IF THE NEED ARISES

- (1) Christopher Hill
CEO
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Hill may be needed to testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; Registrant's use of PERK; likelihood of confusion and actual confusion between

Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

III. DOCUMENTS AND EXHIBITS PETITIONER EXPECTS TO INTRODUCE

Petitioner expects to present documents and exhibits including advertising and marketing materials showing use of Petitioner's Marks; documents concerning information on, and the history of, Petitioner, its business and its brands; documents pertaining to use of Petitioner's Marks; documents supporting the strength and distinctiveness of Petitioner's Marks; documents pertaining to Petitioner's services rendered under Petitioner's Marks; documents pertaining to the priority of use of Petitioner's Marks, documents pertaining to Petitioner's continuous use of Petitioner's Marks; documents pertaining to Petitioner's ownership of Petitioner's Marks; documents pertaining to the Registrant's use of the PERKSPOT mark; documents pertaining to a likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and documents pertaining to Petitioner's trademark registrations and rights therein.

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: September 15, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PETITIONER'S PRETRIAL DISCLOSURES was served on counsel for Registrant at the
following address by U.S. mail, postage prepaid, on this 15th day of September, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

_____/Philip A. Jones/_____

Exhibit G

September 17, 2010

VIA SECOND-DAY FEDERAL EXPRESS

Philip Jones
Brinks Hofer Gilson & Lione
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599

Re: Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC

Dear Philip:

Thank you for sending along your proposed protective order. We have reviewed it and agree to its terms, and have therefore enclosed a signed copy for filing with the TTAB. We trust that, in accordance with your September 13, 2010 email, you will abide by the terms of the signed protective order while we await its entry. We have had documents available for production, but in the three weeks since serving our responses, you made no effort to coordinate a review of those documents. Based on your September 13, 2010 email, it appears that you would like us to make a copy for you, and as a courtesy, we have enclosed a disk with the production, Bates Nos. 1-858.

If you have questions regarding this production, please feel free to contact me.

Sincerely,



Katherine Dennis Nye

KDN

Enclosures

cc: Michael G. Kelber, Esq.

NGEDOCs: 1738684.1

Exhibit H

Jones, Philip

From: Jones, Philip
Sent: Monday, September 13, 2010 5:48 PM
To: Kelber, Michael G. [mkelber@ngelaw.com]
Subject: Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC
Attachments: ProtectiveOrder 09-13.pdf

Dear Michael –

As you know, 12 Interactive has failed to produce any documents in response to the document requests served by Couch/Braunsdorf Affinity (“Perks”), asserting that a protective order needs to be in place first. We have serious concerns about 12 Interactive’s failure to produce any responsive documents because of a lack of a protective order – not every document can be confidential, such as specimens of use of PERKSPOT (Request No. 1) and publicly distributed materials which bear the PERKSPOT mark (Request No. 12).

That said, I attach a protective order which I have signed. The order is based on the TTAB’s form protective order. Please review, and if acceptable, please sign and date it and send me a fully executed copy. I will file the protective order with the TTAB.

Please proceed with production of all responsive documents which have been withheld solely on the grounds of a lack of protective order. Please have these documents produced as soon as possible, and by no later than September 17, 2010. We will agree to abide by the terms of the protective order while we await the document to be entered by the Board.

If you have any questions, please let me know.

Sincerely,

Philip Jones
Intellectual Property Attorney
Brinks Hofer Gilson & Lione
NBC Tower, Suite 3600
455 North Cityfront Plaza Drive
Chicago, IL 60611-5599
312.321.4727 - Direct
312.321.4299 - Fax
pjones@brinkshofer.com
www.usebrinks.com

[Please Note: This message is intended for the individual or entity named above and may constitute a privileged and confidential communication. If you are not the intended recipient, please do not read, copy, use, or disclose this message. Please notify the sender by replying to this message, and then delete the message from your system. Thank you.]

Exhibit I

Philip A. Jones
312-321-4727
pjones@brinkshofer.com



September 21, 2010

Via Facsimile (312) 827-1455

Katherine Dennis Nye
Neal Gerber Eisenberg
Two North LaSalle Street
Chicago, IL 60602-3801

Re: Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC

Dear Katherine:

Thank you for your letter of September 17 enclosing a disc with documents for production.

We take issue, however, with one statement in your letter. You indicate that you have “had documents available for production” but we have not coordinated a review of those documents. Nowhere in your responses to our document requests did 12 Interactive advise us that it had documents available for review. Indeed, the contrary was the case – the responses indicated that all documents were being withheld, at least until a protective order was entered, even though many of these documents were public and not subject to the protective order. (See Response to Request No. 12 – “subject to and without waiving the foregoing objections, Registrant will provide representative samples of promotional materials bearing Registrant’s mark upon entry of a suitable protective order.”)

In short, we were never advised that documents were available for review. Further, we request that when documents are being produced in the future, they be transmitted to our offices when available.

Sincerely,

Philip A. Jones

Exhibit J

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Cancellation No. 92051006
Petitioner,	:	
	:	Mark: PERKSPOT
v.	:	
	:	Registration No. 3,355,480
12 INTERACTIVE, LLC,	:	
	:	Registered: December 18, 2007
Registrant.	:	

**NOTICE OF SUBPOENA TO BRANDEN T. SMYTHE
FOR AN ORAL TESTIMONY DEPOSITION PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 45 AND 35 U.S.C. § 24**

Please take notice that in accordance with Federal Rule of Civil Procedure 45 and 35 U.S.C. § 24, Petitioner Couch/Braunsdorf Affinity is serving a subpoena on Branden T. Smythe, Vice President of National Sales for 12 Interactive, LLC, a true and correct copy of which is attached.

Pursuant to Federal Rule of Civil Procedure 45 and 35 U.S.C. § 24, Mr. Smythe is requested to appear for an oral testimony deposition on December 1, 2010, at 10:00 a.m. at the office of Brinks Hofer Gilson & Lione, NBC Tower Suite 3600, 455 North Cityfront Plaza Drive, Chicago, Illinois 60611, or at such other time and place as agreed to by the parties, but no later than three days after the resumption of Petitioner's testimony period which will be set by the Trademark Trial and Appeal Board after it rules on Registrant 12 Interactive's pending Motion to Quash Notices of Deposition.

The deposition will be recorded by stenographic means and taken before a Notary Public or other duly authorized officer authorized to administer oaths, and will continue from day to day until completed.

You are invited to attend and cross-examine.

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: October 28, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF SUBPOENA TO BRANDEN T. SMYTHE FOR AN ORAL TESTIMONY DEPOSITION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 45 AND 35 U.S.C. § 24** was served on Branden T. Smythe via hand delivery and on counsel for Registrant by first class mail on the 28th day of October, 2010 addressed as follows:

Michael G. Kelber, Esq.
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

/Philip A. Jones/

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COUCH/BRAUNSDORF AFFINITY, INC.,

Plaintiff

v.

12 INTERACTIVE, LLC,

Defendant

Cancellation No. 92051006

~~Civil Action No.~~

(If the action is pending in another district, state where:

USPTO TTAB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Branden T. Smythe

12 Interactive, LLC - 4611 N. Ravenswood Ave. Suite 202, Chicago, IL 60640

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Brinks Hofer Gilson & Lione
455 N. Cityfront Plaza Drive - Suite 3600
Chicago, IL 60611

Date and Time:

December 1, 2010 at 10:00 am **

The deposition will be recorded by this method: Stenographic

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10-28-10

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Couch/Braundsdorf Affinity, Inc., who issues or requests this subpoena, are:

Philip A. Jones - Brinks Hofer Gilson & Lione
455 N. City Front Plaza Drive - Suite 3600, Chicago, IL 60611
(312) 321-4200, pjones@brinkshofer.com

** Or at such other time and place as agreed to by the parties, but no later than three days after the resumption of Petitioner's testimony period which will be set by the Trademark Trial and Appeal Board after it rules on Registrant 12 Interactive's pending Motion to Quash Notices of Deposition.

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

United States District Court for the Northern District of Illinois

Couch/Braunsdorf Affinity, Inc.

Plaintiff(s)

Case No.: 92051006 USPTO 11 AB

vs

AFFIDAVIT OF SERVICE

12 Interactive, L.I.C.

Defendant(s)

I, Oscar Luna Jr., being first duly sworn on oath depose and say the following:

I am over the age of 18, not a party to this action, and an employee or agent of United Processing, Inc., a licensed private detective agency, license number 117-001101, appointed by the court to serve process in the above-referenced cause.

On October 28, 2010 at 6:15 PM, I **SERVED** the within Notice, Subpoena and Witness Fee of \$42.00 on Branden T. Smythe, 12 Interactive in the following manner:

INDIVIDUAL SERVICE: By delivering a copy of the Notice, Subpoena and Witness Fee of \$42.00 to Branden T. Smythe, 12 Interactive personally.

Branden T. Smythe, 12 Interactive was served at 2619 N. Hampden Ct. Apt. 4N, Chicago, IL 60614

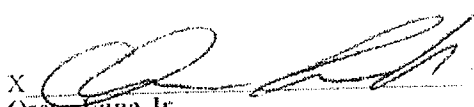
Description of person process was left with:

Sex: Male - Skin: Caucasian - Hair: Brown - Approx. Age: 35-40 - Height: 5'10" - Weight: 180

Comments: Red brick building. Gave subpoena to Branden T. Smythe

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Affidavit of Service are true and correct.

Further the affiant sayeth naught.

X 
Oscar Luna Jr.
License(s): 117-001101

United Processing, Inc.
162 W. Grand Ave.
Chicago, IL 60654
(312) 629-0110
File #
Court Date: 12/01/2010

Fees:	
Advanced Witness Fee	\$42.00
Service of Process--Routine	\$125.00
TOTAL:	\$167.00



177647

Exhibit K

**THIS EXHIBIT IS CONFIDENTIAL AND
HAS BEEN FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

Exhibit L

**THIS EXHIBIT IS CONFIDENTIAL AND
HAS BEEN FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

Exhibit M

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:		
	:	Cancellation No.	92051006
Petitioner,	:		
	:	Mark:	PERKSPOT
v.	:		
	:	Registration No.	3,355,480
12 INTERACTIVE, LLC,	:		
	:	Registered:	December 18, 2007
Registrant.	:		

PETITIONER'S SUPPLEMENTAL PRETRIAL DISCLOSURES

Petitioner, Couch/Braunsdorf Affinity, Inc. ("Petitioner"), pursuant to Trademark Rule 2.121(e), 37 C.F.R. § 2.121(e) and rule 26 of the Federal Rules of Civil Procedure, hereby makes the following supplemental pretrial disclosures. Petitioner reserves the right to supplement these pretrial disclosures, should additional information become available.

I. WITNESSES WHOSE TESTIMONY PETITIONER EXPECTS TO PRESENT

- (1) Bob Dow
President
President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard
11 Oval Drive
Islandia, NY 11749

Subject: Mr. Dow who is the President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard, an entity related to Petitioner, is expected to testify on some or all of the following topics:

Information on, and the history of, Petitioner, its business and its brands; Petitioner's PERKS and PERKSCARD marks ("Petitioner's Marks"); the strength and distinctiveness of Petitioner's Marks; Petitioner's current and historical use of Petitioner's Marks; Petitioner's ownership of Petitioner's Marks; Petitioner's priority of use; Petitioner's registrations; the recognition of Petitioner's Marks within the relevant industry; the services Petitioner renders under Petitioner's

Marks; the existence of a likelihood of confusion between Petitioner's use and registration of Petitioner's Marks and the use and registration of the PERKSPOT mark by 12 Interactive, LLC ("Registrant"), including but not limited to, similarities of the marks, the relatedness of the services, the strength of Petitioner's Marks, the relatedness of the respective channels of trade and customers, market interface between Petitioner and Registrant, and the extent of confusion; actual confusion resulting from Registrant's use of the PERKSPOT mark; other uses of PERK by Registrant; and the damage caused by Registrant's activities, including the use and registration of the PERKSPOT mark.

II. WITNESSES WHOSE TESTIMONY PETITIONER MAY PRESENT IF THE NEED ARISES

- (1) Christopher Hill
CEO
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Hill may be needed to testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; Registrant's use of PERK; likelihood of confusion and actual confusion between

Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

- (2) Branden T. Smythe
Vice President of National Sales
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Smythe may be needed to testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

- (3) Sean Keeler
Sales Representative
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Keeler may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark.

- (4) Daniel S. Kristal
Vice President
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Kristal may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and

Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

III. DOCUMENTS AND EXHIBITS PETITIONER EXPECTS TO INTRODUCE

Petitioner expects to present documents and exhibits including advertising and marketing materials showing use of Petitioner's Marks; documents concerning information on, and the history of, Petitioner, its business and its brands; documents pertaining to use of Petitioner's Marks; documents supporting the strength and distinctiveness of Petitioner's Marks; documents pertaining to Petitioner's services rendered under Petitioner's Marks; documents pertaining to the priority of use of Petitioner's Marks, documents pertaining to Petitioner's continuous use of Petitioner's Marks; documents pertaining to Petitioner's ownership of Petitioner's Marks; documents pertaining to the Registrant's use of the PERKSPOT mark; documents pertaining to a likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and documents pertaining to Petitioner's trademark registrations and rights therein.

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: October 20, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PETITIONER'S SUPPLEMENTAL PRETRIAL DISCLOSURES was served on counsel
for Registrant at the following address by U.S. mail, postage prepaid, and by Facsimile
transmission on this 20th day of October, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801
(312) 429-3580

/Philip A. Jones/

Exhibit N

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Cancellation No. 92051006
Petitioner,	:	
	:	Mark: PERKSPOT
v.	:	
	:	Registration No. 3,355,480
12 INTERACTIVE, LLC,	:	
	:	Registered: December 18, 2007
Registrant.	:	

NOTICE OF TESTIMONY DEPOSITION OF BRANDEN T. SMYTHE

TO: Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

PLEASE TAKE NOTICE that, in accordance with Trademark Rule 2.123,
Couch/Braunsdorf Affinity, Inc. will take the oral testimony deposition of Branden T. Smythe,
Vice President of National Sales for 12 Interactive, LLC, 224 W. Huron St., Suite 6E, Chicago,
Illinois 60654. The deposition will take place on Thursday October 28, 2010, at 10:00 a.m. at
the offices of Brinks Hofer Gilson & Lione, NBC Tower Suite 3600, 455 North Cityfront Plaza
Drive, Chicago, Illinois 60611, or at such other time and place as agreed to by the parties.

The deposition will be recorded by stenographic means and taken before a Notary Public
or other duly authorized officer authorized to administer oaths, and will continue from day to day
until completed.

You are invited to attend and cross-examine.

COUCH/BRAUNSDORF AFFINITY, INC.,

Dated: October 20, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF TESTIMONY DEPOSITION OF BRANDEN T. SMYTHE** was served on counsel for Registrant at the following address by U.S. mail, postage prepaid, and by Facsimile transmission on this 20th day of October, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801
(312) 429-3580

/Philip A. Jones/

Exhibit O

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Cancellation No. 92051006
Petitioner,	:	
	:	Mark: PERKSPOT
v.	:	
	:	Registration No. 3,355,480
12 INTERACTIVE, LLC,	:	
	:	Registered: December 18, 2007
Registrant.	:	

NOTICE OF TESTIMONY DEPOSITION OF SEAN KEELER

TO: Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

PLEASE TAKE NOTICE that, in accordance with Trademark Rule 2.123,
Couch/Braunsdorf Affinity, Inc. will take the oral testimony deposition of Sean Keeler, Sales
Representative at Augeo Affinity Marketing, 2561 Territorial Road, St. Paul, Minnesota 55114.
The deposition will take place on Friday October 29, 2010, at 10:30 a.m. at the offices of Augeo
Affinity Marketing, or at such other time and place as agreed to by the parties.

The deposition will be recorded by stenographic means and taken before a Notary Public
or other duly authorized officer authorized to administer oaths, and will continue from day to day
until completed.

You are invited to attend and cross-examine.

COUCH/BRAUNSDORF AFFINITY, INC.,

Dated: October 20, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF TESTIMONY DEPOSITION OF SEAN KEELER** was served on counsel for Registrant at the following address by U.S. mail, postage prepaid, and by Facsimile transmission on this 20th day of October, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801
(312) 429-3580

/Philip A. Jones/

Exhibit P

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	
	:	Cancellation No. 92051006
Petitioner,	:	
	:	Mark: PERKSPOT
v.	:	
	:	Registration No. 3,355,480
12 INTERACTIVE, LLC,	:	
	:	Registered: December 18, 2007
Registrant.	:	

NOTICE OF TESTIMONY DEPOSITION OF DANIEL S. KRISTAL

TO: Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

PLEASE TAKE NOTICE that, in accordance with Trademark Rule 2.123,
Couch/Braunsdorf Affinity, Inc. will take the oral testimony deposition of Daniel S. Kristal, Vice
President of Augeo Affinity Marketing, 2561 Territorial Road, St. Paul, Minnesota 55114. The
deposition will take place on Friday October 29, 2010, at 1:30 p.m. at the offices of Augeo
Affinity Marketing, or at such other time and place as agreed to by the parties.

The deposition will be recorded by stenographic means and taken before a Notary Public
or other duly authorized officer authorized to administer oaths, and will continue from day to day
until completed.

You are invited to attend and cross-examine.

COUCH/BRAUNSDORF AFFINITY, INC.,

Dated: October 20, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF TESTIMONY DEPOSITION OF DANIEL S. KRISTAL** was served on counsel for Registrant at the following address by U.S. mail, postage prepaid, and by Facsimile transmission on this 20th day of October, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801
(312) 429-3580

/Philip A. Jones/

Exhibit Q

**THIS EXHIBIT IS CONFIDENTIAL AND
HAS BEEN FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER**

Exhibit R

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:	Cancellation No. 92051006
	:	
Petitioner,	:	Mark: PERKSPOT
	:	
v.	:	Registration No. 3,355,480
	:	
12 INTERACTIVE, LLC,	:	Registered: December 18, 2007
	:	
Registrant.		

PETITIONER'S SUPPLEMENTAL INITIAL DISCLOSURES

Petitioner, Couch/Braunsdorf Affinity ("Petitioner"), hereby makes the following supplemental initial disclosures pursuant to Trademark Rule 2.120(a)(2) and Federal Rule of Civil Procedure 26(a)(2). These supplemental disclosures are necessary to identify new witnesses whose testimony Petitioner may present during Petitioner's testimony period if the need arises and to be consistent with Petitioner's Pretrial Disclosures and Supplemental Pretrial Disclosures.

Petitioner adds Christopher Hill, CEO of Registrant 12 Interactive, LLC ("Registrant"). Registrant has previously identified Mr. Hill in its Initial Disclosures as an individual likely to have discoverable information relevant to this proceeding, and Petitioner has already identified Mr. Hill in its previously served PreTrial Disclosures.

Petitioner also adds Branden T. Smythe, Sean Keeler, and Daniel S. Kristal to its Supplemental Initial Disclosures. All three individuals have been previously disclosed in Petitioner's Supplemental PreTrial Disclosures. The relevant information in the possession of these three individuals, which includes information on actual confusion, did not come to light until after the service of Petitioner's Initial Disclosures and its PreTrial Disclosures.

Finally, Petitioner adds Michelle Whitehead and Cindy Blackburn to its Supplemental Initial Disclosures. These two individuals have knowledge regarding an incident of actual confusion that occurred on or about October 26, 2010, and thus after service of Petitioner's Initial Disclosures, and Petitioner's Supplemental PreTrial Disclosures.

Petitioner reserves the right to further supplement these Initial Disclosures, should additional information become available.

A. Individuals Likely to Have Discoverable Information Applicant May Use To Support Petitioner's Position.

(1) Bob Dow
President
President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard
11 Oval Drive
Islandia, NY 11749

Subject: Mr. Dow who is the President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard, an entity related to Petitioner, may have discoverable information that Petitioner will rely on in this Proceeding and may testify on some or all of the following topics: Information on, and the history of, Petitioner, its business and its brands; Petitioner's PERKS and PERKSCARD marks ("Petitioner's Marks"); the strength and distinctiveness of Petitioner's Marks; Petitioner's current and historical use of Petitioner's Marks; Petitioner's ownership of Petitioner's Marks; Petitioner's priority of use; Petitioner's registrations; the recognition of Petitioner's Marks within the relevant industry; the services Petitioner renders under Petitioner's Marks; the existence of a likelihood of confusion between Petitioner's use and registration of Petitioner's Marks and the use and registration of the PERKSPOT mark by 12 Interactive, LLC ("Registrant"), including but not limited to, similarities of the marks, the relatedness of the services, the strength of Petitioner's Marks, the relatedness of the

respective channels of trade and customers, market interface between Petitioner and Registrant, and the extent of confusion; actual confusion resulting from Registrant's use of the PERKSPOT mark; other uses of PERK by Registrant; and the damage caused by Registrant's activities, including the use and registration of the PERKSPOT mark.

(2) Christopher Hill
CEO
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Hill may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; Registrant's use of PERK; likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

(3) Branden T. Smythe
Vice President of National Sales
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Smythe may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the

PERKSPOT mark; likelihood of confusion and actual confusion between Petitioner's use and registration Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

(4) Sean Keeler
Sales Representative
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Keeler may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark.

(5) Daniel S. Kristal
Vice President
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Kristal may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

(6) Michelle Whitehead
Senior Benefits Specialist/Corporate Human Resources
Afni, Inc.
404 Brock Drive
Bloomington, IL 61701

Subject: Ms. Whitehead may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

(7) Cindy Blackburn
Vice President of Human Resources
Afni, Inc.
404 Brock Drive
Bloomington, IL 61701

Subject: Ms. Blackburn may have discoverable information that Petitioner will rely on in this Proceeding and may testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

B. Documents, Data Compilations and Tangible Things Applicant May Use To Support Petitioner's Position.

Documents within Petitioner's possession, custody or control that Petitioner may use to support its position include the following categories: (1) advertising/marketing materials

showing use and promotion of Petitioner's marks; (2) documents relating to Petitioner's services; (3) documents supporting Petitioner's trademark registrations and rights therein; (4) documents supporting the existence of a likelihood of confusion; and (5) documents supporting the distinctiveness of the PERKS and PERKSCARD Marks.

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: November 5, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PETITIONER'S SUPPLEMENTAL INITIAL DISCLOSURES was served on counsel for
Registrant by first class mail 5th day of November, 2010 addressed as follows:

Michael G. Kelber, Esq.
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801

/Philip A. Jones/

Exhibit S

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

COUCH/BRAUNSDORF AFFINITY, INC.,	:		
	:	Cancellation No.	92051006
Petitioner,	:		
	:	Mark:	PERKSPOT
v.	:		
	:	Registration No.	3,355,480
12 INTERACTIVE, LLC,	:		
	:	Registered:	December 18, 2007
Registrant.	:		

PETITIONER'S SECOND SUPPLEMENTAL PRETRIAL DISCLOSURES

Petitioner, Couch/Braunsdorf Affinity, Inc. ("Petitioner"), pursuant to Trademark Rule 2.121(e), 37 C.F.R. § 2.121(e) and rule 26 of the Federal Rules of Civil Procedure, hereby makes the following supplemental pretrial disclosures.

Petitioner first served its Pretrial Disclosures upon Registrant 12 Interactive, LLC ("Registrant") on September 15, 2010, as required by the scheduling order in this proceeding. On October 20, 2010, Petitioner supplemented its Pretrial Disclosures to add Branden T. Smythe, Sean Keeler, and Daniel S. Kristal to the list of witnesses whose testimony Petitioner may present during Petitioner's testimony period if the need arises. Petitioner did not include these three individuals in its first Pretrial Disclosures because the relevant information in the possession of these individuals did not come to light until after the first Pretrial Disclosures were served.

Petitioner now supplements its Pretrial Disclosures for a second time to add Michelle Whitehead and Cindy Blackburn to the list of witnesses whose testimony Petitioner may present during Petitioner's testimony period if the need arises. Both Ms. Whitehead and Ms. Blackburn are employees of Afni, Inc., a client of Petitioner, and may be needed to testify about an

additional incident of actual confusion that occurred on October 26, 2010, after Petitioner served its Supplemental Pretrial Disclosures.

Petitioner reserves the right to supplement these pretrial disclosures, should additional information become available.

I. WITNESSES WHOSE TESTIMONY PETITIONER EXPECTS TO PRESENT

(1) Bob Dow
President
President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard
11 Oval Drive
Islandia, NY 11749

Subject: Mr. Dow who is the President of Couch/Braunsdorf Affinity, Inc. d/b/a PerksCard, an entity related to Petitioner, is expected to testify on some or all of the following topics:

Information on, and the history of, Petitioner, its business and its brands; Petitioner's PERKS and PERKSCARD marks ("Petitioner's Marks"); the strength and distinctiveness of Petitioner's Marks; Petitioner's current and historical use of Petitioner's Marks; Petitioner's ownership of Petitioner's Marks; Petitioner's priority of use; Petitioner's registrations; the recognition of Petitioner's Marks within the relevant industry; the services Petitioner renders under Petitioner's Marks; the existence of a likelihood of confusion between Petitioner's use and registration of Petitioner's Marks and the use and registration of the PERKSPOT mark by 12 Interactive, LLC ("Registrant"), including but not limited to, similarities of the marks, the relatedness of the services, the strength of Petitioner's Marks, the relatedness of the respective channels of trade and customers, market interface between Petitioner and Registrant, and the extent of confusion; actual confusion resulting from Registrant's use of the PERKSPOT mark; other uses of PERK by Registrant; and the damage caused by Registrant's activities, including the use and registration of the PERKSPOT mark.

II. WITNESSES WHOSE TESTIMONY PETITIONER MAY PRESENT IF THE NEED ARISES

- (1) Christopher Hill
CEO
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Hill may be needed to testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; Registrant's use of PERK; likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

- (2) Branden T. Smythe
Vice President of National Sales
12 Interactive, LLC
224 W. Huron St., Suite 6E
Chicago, IL 60654

Subject: Mr. Smythe may be needed to testify on the following topics: Registrant's use and registration of the PERKSPOT mark; advertising and promotion of the PERKSPOT mark; Registrant's knowledge of Petitioner and Petitioner's Marks; services Registrant offers under the PERKSPOT mark; channels of trade in which Registrant offers services under the PERKSPOT mark; likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and Registrant's customers.

- (3) Sean Keeler
Sales Representative
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Keeler may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark.

- (4) Daniel S. Kristal
Vice President
Augeo Affinity Marketing
2561 Territorial Road
St. Paul, MN 55114

Subject: Mr. Kristal may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

- (5) Michelle Whitehead
Senior Benefits Specialist/Corporate Human Resources
Afni, Inc.
404 Brock Drive
Bloomington, IL 61701

Subject: Ms. Whitehead may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

(6) Cindy Blackburn
Vice President of Human Resources
Afni, Inc.
404 Brock Drive
Bloomington, IL 61701

Subject: Ms. Blackburn may be needed to testify on the following topics: Likelihood of confusion and actual confusion between Petitioner's use and registration of Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark, Petitioner's use of PERKS and PERKSCARD, the recognition of Petitioner's Marks within the relevant industry, and the services rendered under Petitioner's Marks.

III. DOCUMENTS AND EXHIBITS PETITIONER EXPECTS TO INTRODUCE

Petitioner expects to present documents and exhibits including advertising and marketing materials showing use of Petitioner's Marks; documents concerning information on, and the history of, Petitioner, its business and its brands; documents pertaining to use of Petitioner's Marks; documents supporting the strength and distinctiveness of Petitioner's Marks; documents pertaining to Petitioner's services rendered under Petitioner's Marks; documents pertaining to the priority of use of Petitioner's Marks, documents pertaining to Petitioner's continuous use of Petitioner's Marks; documents pertaining to Petitioner's ownership of Petitioner's Marks; documents pertaining to the Registrant's use of the PERKSPOT mark; documents pertaining to a likelihood of confusion and actual confusion between Petitioner's use and registration of

Petitioner's Marks and Registrant's use and registration of the PERKSPOT mark; and documents pertaining to Petitioner's trademark registrations and rights therein.

COUCH/BRAUNSDORF AFFINITY, INC.

Dated: November 5, 2010

/Philip A. Jones/
Philip A. Jones
Joshua S. Frick
BRINKS HOFER GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **PETITIONER'S SECOND SUPPLEMENTAL PRETRIAL DISCLOSURES** was served on counsel for Registrant at the following address by U.S. mail, postage prepaid, and by Facsimile transmission on this 5th day of November, 2010.

Michael G. Kelber, Esq.
Neal, Gerber & Eisenberg LLP
Two North LaSalle Street
Suite 1700
Chicago, Illinois 60602-3801
(312) 429-3580

_____/Philip A. Jones/_____
.